

## RED WOLF REGULATIONS

Problems encountered or anticipated in implementing our current red wolf regulations, as articulated in a memo of December 1, 1998, from Brian Kelly to Gary Henry support a need to revisit the regulations. This paper is intended to provide input to participants that will evaluate these regulations in a meeting planned for January 21, 1999 in Manteo, North Carolina.

Although other regulations may be discussed at the planned meeting, this paper will concentrate only on the regulations (two in number) that have been identified as potential problems. These regulations are as follows (50CFR, Part 17.84):

**"(c)(4)(v) Any private landowner may take red wolves found on his or her property . . . after efforts by project personnel to capture such animals have been abandoned, *Provided* that the Service project leader or biologist has approved such actions in writing and all such taking shall be reported within 24 hours . . ."**

**"(10) . . . Any animal . . . that moves onto lands where the landowner requests their removal will be recaptured, if possible, . . . Such animals will be released back into the wild as soon as possible, . . ."**

### Background

The original 1986 rule stated that "Any animal . . . which moves off Federal lands, will be immediately recaptured . . . Such an animal will be released back to the wild on the refuge as soon as possible, . . ." In the Supplementary Information provided in the 1995 rule change it is stated "The intent of the special rule regarding the recapture of wolves leaving Federal lands was that it would be implemented only when such wolves caused conflicts and/or the landowner wanted the wolves removed. This intent is not clear. Red wolves had established themselves on private lands within 2 years (1989) of the first reintroduction releases, and several private landowners have agreed to allow the wolves to inhabit their property. Obviously, there is no need to remove wolves from private lands when the landowner has no problem with the wolves being there. Therefore, the special rule is modified to provide that all landowner requests to remove wolves from their property will be honored, but wolves that inhabit lands where the landowner agrees to allow them to reside will not be recaptured unless they cause a conflict."

In addition, Gary Henry addressed perceptions regarding Service commitments regarding wolves on private lands in a June 2, 1995 letter to Tom Ellis, Chairman of the Nongame Wildlife Advisory Committee of the North Carolina Wildlife Resources Commission as follows:

"I need to address comments concerning the original Service proposal for Alligator River. Since I was not involved with the project at that time, I cannot attest to any statements--made or not made. . .

. The only documentation I can find regarding the proposal are the proposed and final rule and the

EA. I have found nothing in these documents stating that (1) wolves wandering off the refuge could be shot, (2) wolves being killed off the refuge would be addressed under state jurisdiction, and (3) there was an agreement the Service had supposedly violated. It seems reasonable to me that if these were important issues regarding oral commitments, the reviewing agencies (such as the North Carolina Department of Agriculture and the Commission) would have addressed them when they reviewed the documents. No such comments were received.

I assume the statement in the final rule that wolves moving off Federal land would be recaptured could be interpreted as an agreement to confine the animals to the refuge and a failure to do so would violate such an agreement. Again, I am at a disadvantage because I was not involved at that time. However, my discussions with personnel involved and other evidence leads me to other interpretations. I think the assumption was made that the wolves, by and large, were not wanted on private land so most of them would need to be recaptured. I do not believe that the intent was to recapture animals on private land where the landowners accepted their presence. This belief is based on several pieces of evidence, in addition to conversations with the personnel involved. First of all, reintroduction began in 1987, and in that same year the first private landowner agreement was signed" (incorrect - this was an oral agreement) "to allow wolves on private property. By 1989, and ever since, wolves have inhabited private property. By the end of the 5-year experimental phase of the project in 1992, wolves inhabited private land adjacent to Pocosin Lakes, and the owners of a total of 187,000 acres of private land had agreed to allow wolves on their property.

Other indirect pieces of evidence that the intent was not to confine wolves to the refuge would include the biological fact that there is no way to confine a wild animal like a wolf, an animal that is known for extensive travel and large home ranges, to a small refuge the size of Alligator River. By definition, if they could be and were confined to a specific area like the refuge, they would no longer be "wild" animals. Also the experimental population boundary established for the reintroduction included four counties (later extended to five counties) in their entirety "

Another paragraph in the Supplementary Information provided in the 1995 rule change stated that "It is highly objectionable to owners of livestock and pets to be unable to kill a predator that is engaged in killing their livestock or pets. This, in turn, leads to the erosion of public support for predator reintroductions, which is essential if this effort is to be successful. Also, there may be a time lapse before offending animals settle into a predictable pattern whereby they can be recaptured. During this time period, private landowners will not be allowed to take the animals themselves. The Service will respond to reported incidents within 48 hours. However, the existing special rule (Part 17.24(c)(4)(iv)) does not establish a definitive time when Service or State attempts to recapture the animal are deemed unsuccessful and the private landowner is then permitted to take the offending animals. This is a decision that must be made by the Service project leader or biologist in the field at the depredation location. Therefore, a rule revision provides that private landowners will be permitted to take offending animals upon written approval by the Service project leader or biologist on site of the depredation. This approval will be provided when the Service abandons attempts to capture the offending animal and will specify

the authorized personnel (landowner and a limited number of his agents), the number of animals, and the time period (not to exceed 6 months). Also, private landowners will be allowed to take red wolves in the act of killing livestock or pets on private lands without the need for Service approval.

This background explains the reasons for the regulations in their present form, i.e., the perception, right or wrong, that the Service committed to keeping wolves off of private lands, at least where they were not wanted, coupled with recognition that eventually removing wolves from private lands would be unworkable in terms of manpower extended to affect removal. The approval letter was considered an option to be implemented when we did not want to expend manpower in removing wolves. It was felt that we would only authorize the taking of a number of animals for which we had evidence that were using the property and only for a specified time period. Based on historical evidence, it was believed that the possibility of landowners taking wolves using legal lethal means (primarily shooting) was very low. Wolves were only historically extirpated by an all-out intensive predator control program using traps, poisons, den digging, etc. The most likely method for landowner success in taking wolves would be by employing local trappers. We could include in an approval letter that wolves taken alive must be returned to the Service. Over time, it was considered likely that the landowner would eventually see the folly in removal attempts and would learn to live with the animals.

Other information also needs to be considered. Wildlife are not the property of landowners but belong to the public and are managed by Federal and State governments for the public good. As a result of this public ownership, traditional wildlife management concepts do not provide for the taking or removal of wildlife from private lands in the absence of a problem. However, the reintroductions of endangered species, particularly predators, is viewed differently by the public because they do not consider them as naturally occurring populations but as artificially constructed populations forced upon them by the government. Because of this viewpoint and the prohibitions against taking of endangered species the public did not support reintroductions of endangered species until the ESA was amended to provide for experimental population designations and the attendant flexibility to reduce taking prohibitions by writing regulations to address local situations. In comparison to other wolf reintroductions, the two regulations under scrutiny are not used in the Rocky Mountain reintroduction projects, but the regulation to remove wolves from private land where they are not wanted is used in the Mexican Wolf reintroductions.

### **Present Situation**

Brian Kelly's December 1, 1998 memo to Gary Henry and the attached November 23, 1998 memo from Brian to his field crew (attached) provides input regarding the present situation and articulates the frustration in dealing with the situation and some potential risks involved with implementing the regulations. The only things to be added are (1) the fact that the public perception by some that we committed to keep wolves off of private lands, at least where they were not wanted, is still common and (2) we have never implemented approval letters so we have no evidence to support or refute the usefulness of this regulation.

## **Alternatives**

The alternatives revolve around the question of changing or not changing the regulations and the timing of suggested changes. These alternatives are as follows:

**No Change:** Fully implement the existing regulations, including the letter to landowners to take wolves.

**Benefits:** By not changing the regulations current support for the project will not be altered. A spinoff of this is that we continue our past philosophy of not stirring the pot when things are going well, thus minimizing possibility of adverse political consequences.

**Liabilities:** By implementing regulations that are not in line with traditional wildlife management concepts, that are probably the most lenient regulations for taking of any endangered species, and that are not in agreement with other wolf reintroduction projects, protectionist groups may not support the project. (Note: We were threatened with a law suite that never materialized on these regulations. Thus, the danger of challenge to the regulations has likely passed.) If significant number of landowners request and receive approval letters and are successful in taking wolves, we may be compromising our ability to manage and recover the species (see Brian Kelley's November 23 and December 1, 1998 memos).

**Change Regulations ASAP:** Amend the regulations to only allow the taking or removal of animals that have caused a problem.

**Benefits:** This would bring the regulations into closer agreement with traditional wildlife management concepts and would enhance our ability to manage and recover the species.

**Liabilities:** This would risk a public backlash that could erode local support for the project and could result in political consequences (Note: Remember that Senator Helms came within one vote of eliminating funding for this project a few years ago).

**Change Regulations When We Submit Rules For the Next Reintroduction Project:** We most likely will be submitting a proposed and final rule to implement reintroduction at a new site within two years. The proposed changes could be incorporated into such a package.

**Benefits:** In addition to the benefits listed above, chances of public acceptance would be better if done in this way because the proposed changes would be less likely to be the primary focus because of the dilution effect due to the content of the rest of the package.

**Liabilities:** The liabilities listed above would still be present but less likely. In addition, the delay in changing the regulations risks negative impacts to our ability to manage and

\* recover the species during this time and this impact may have long-term significance.

The task before us is to evaluate the relative benefits and liabilities associated with the alternatives presented, or other alternatives, and select the alternative that is judged to be in the best interests of the red wolf recovery program.